



Comptroller General
of the United States

Washington, D.C. 20548

Formica

144898

Decision

Matter of: State Machine Products

File: B-245427.2

Date: September 24, 1991

Gary D. Smith, Esq., for the protester.
John Formica, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A letter to the contracting agency protesting the award of a contract that does not specify any basis for protest is not sufficient to constitute an agency-level protest; therefore, a protest subsequently filed with the General Accounting Office more than 10 working days after the basis for protest was known is untimely under our Bid Protest Regulations.

DECISION

State Machine Products (SMP), a small business concern, protests the determination of the Defense Logistics Agency (DLA) that it is not responsible, and the subsequent denial of a certificate of competency (COC) by the Small Business Administration (SBA) in connection with the rejection of its bid under invitation for bids No. DLA400-91-B-1868, issued by the DLA.

We dismiss the protest dated September 10, 1991, as untimely because it was filed more than 10 working days after the protester knew of the basis for its protest.

The protester received a letter from DLA on August 5, 1991, notifying it that its bid had been rejected because SMP had been denied a COC by SBA, and that award under the solicitation had been made to another firm. SMP immediately submitted a letter via facsimile machine to the agency on August 5, stating that it was protesting the award of a contract under the solicitation, but not specifying any basis for protest. On August 28, SMP filed a protest with our Office, stating that it had been notified by the agency of the award under the solicitation on August 5, had filed a protest of the award with the agency on that same day, and was now protesting the award to our Office. This August 28 protest also did not include any factual information regarding the procurement. Since the protest did not establish the likelihood that DLA violated applicable procurement laws or

regulations in making the award, we summarily dismissed it on September 3, 1991.

The protester has now submitted to our Office a document raising new issues of protest, which it characterizes as "supplemental protest information."^{1/} This submission is untimely under our Bid Protest Regulations and will not be considered.

Our Bid Protest Regulations provide that a protest based on other than a solicitation impropriety must be filed not later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). If a protest has been initially filed with the contracting agency, and the protester then files a protest with our Office, prior to receiving a response to its agency-level protest, we will consider the protest, provided that the initial protest to the agency was timely and the protester waited only a reasonable time for the contracting agency response before filing its protest with our Office. See 4 C.F.R. § 21.2(a)(3); Sterling Env'tl. Servs., Inc., B-234798, May 12, 1989, 89-1 CPD ¶ 455.

SMP did not file a protest with our Office until more than 10 working days after it knew of its basis of protest on August 5. Therefore, any protest here can be considered timely only if SMP initially filed a timely protest with the agency. In this regard, however, SMP's August 5 letter to the agency, while stating that it was protesting the award of a contract under the solicitation, failed to specify any basis for protest. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). Therefore, SMP's August 5 letter, which did not allege any facts regarding the procurement, was not sufficient to constitute a protest. MedSource, Inc., B-225635, Jan. 27, 1987, 87-1 CPD ¶ 92. Since no timely protest was filed with the agency, SMP's submission of September 11, whether considered a supplement to the August 28 protest raising new issues or a new protest, is untimely.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel

^{1/} The protester apparently had not yet received a copy of our September 3 decision dismissing the protest it had filed here on August 28, 1991.